

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.

S. B. CIVIL MISC. APPEAL NO. 314/2001

NATIONAL INSURANCE CO. LTD.

V

DHIRENDRA SINGH & OTHERS

Date of Judgment:

1st DECEMBER, 2006

Hon'ble Mr. Justice R. S. Chauhan

Mr. Vizzy Agarwal for the appellant.

None for the respondents.

By Court:

The appellant is challenging the order dated 21.7.2000 passed by the Workman Compensation Commissioner whereby the learned Commissioner has granted a compensation of Rs. 2,31,753/- alongwith interest @ 12% per annum to the respondents-claimants.

Briefly, the facts of the case are that the respondent-claimant, Dhirendra Singh was employed by respondent No.2, Brijmohan Bansal, as a driver. In the midnight of 4.1.95/5.1.95 while the respondent-claimant was travelling, the trailer driven by the second driver Anwar met with an accident. Due to the accident while Anwar expired on

the spot, the respondent claimant suffered grievous injuries. Therefore, he filed a claim petition before the learned Commissioner. After hearing both the parties and after considering the oral and documentary evidence on record, vide order dated 21.7.2000 the learned Commissioner granted a compensation as aforementioned. Hence this appeal by the Insurance Company.

Mr. Vizzy Agarwal, the learned counsel for the appellant has contended that the accident took place on 4.1.95. Till then, section 4 of the Workmen Compensation Act, 1923 (henceforth to be referred to as 'the Act', for short) was not amended. It is only on 15.9.95 that Section 4 was amended. According to the learned counsel there are certain changes which were brought in by way of amendment. According to him, it is the law which is prevalent on the date of the accident which should be applied and not the amended law. However, while deciding the claim petition, the learned Commissioner has applied the amended law. Therefore, the said order is contrary to the settled principles of law.

On three occasions, i.e. 11.10.06, 6.11.06 and 13.11.06, the learned counsel for the respondent-claimant did not appear before this Court. Therefore, this Court is constrained to pass this order in his absence.

We have heard the learned counsel for the appellant and have perused the impugned order.

It is, indeed, a settled principle of law that the provisions of the Act have to be applied as existing on the date of accident and not as existing on the date of the passing of the order. The said position has been stated by the Hon'ble Supreme Court in the case of Kerala State Electricity Board Vs. Vasala K. (2000 (1) T.A.C. 6 (SC)). As early as in 1976 in the case of Pratap Narain Singh Deo Vs. Srinivas Sabata (1976 (1) SCC 289), the Hon'ble Supreme Court had clearly held that an employer becomes liable to pay the compensation as soon as the personal injury is caused to the workman by an accident which arose out of and in the course of employment. Thus, the relevant date for determination of the rate of compensation is the date of accident and not the date of the adjudication of the

claim.

Prior to the amendment, Sections 4(a), 4(b) and 4(c)

were as under :-

4.Amount of compensation.--(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-

(a) where death results from the injury,	an amount equal to fifty per cent of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of fifty thousand rupees, whichever is more;
(b) where permanent total disablement results from the injury,	An amount equal to sixty per cent of the monthly wages of the injured workman multiplied by the relevant factor; or an amount of sixty thousand rupees whichever is more;

Explanation I.-- For the purpose of clause (a) and clause (b), "relevant factor" in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due;

Explanation II.-- Where the monthly wages of a workman exceed two thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be two thousand rupees only,

© Where permanent partial disablement results from the injury,	(i) in the case of an injury specified in Part II of Schedule I, such percentage
--	--

practitioner shall have due regard to the percentages of loss of earning capacity, in relation to different injuries specified in Schedule I;

However, after the amendment Section 4(1)(b)

has been amended as under:-

(b) where permanent total disablement results from the injury,	an amount equal to sixty per cent of the monthly wages of the injured workman multiplied by the relevant factor; or an amount of ninety thousand rupees whichever is more;
--	---

Explanation I.-- For the purpose of clause (a) and clause (b), "relevant factor" in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due;

Explanation II.-- Where the monthly wages of a workman exceed four thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be four thousand rupees only;

Since the accident had occurred on 4.1.95 i.e. prior to the amendment of Section 4 of the Act, unamended law should have been applied by the learned Commissioner.

However, the learned Commissioner has applied the amended law. Hence, clearly the impugned order is unsustainable.

According to the unamended Act the maximum wages to be taken was Rs. 1,000/-. According to Section 4(1)(b) where the permanent disability results from injury an amount equal to

50% of the monthly wages of the workman shall be multiplied by the relevant factor. Applying the said formula and taking the monthly wages as Rs. 1,000/- the compensation needs to be calculated as under:-

$$500 \times 24 \times 218.47 = 1,09,235/-.$$

Moreover, according to Section 4(3)(a) of the Act prior to the amendment, only 6% interest could be paid on the compensation amount. However, the learned Commissioner has wrongly held that an interest @ 12% should be paid.

Therefore, this Court has no hesitation in reducing the interest rate from 12% to 6%. Such a reduction is in consonance with the unamended law.

In the result, this appeal is allowed and the order dated 21.7.2000 is modified to the extent that the compensation amount is reduced from Rs. 2,31,753/- to Rs. 1,09,235/- and the interest rate is reduced from 12% to 6%. In case the compensation amount has not been disbursed so far to the claimant, the learned Commissioner is directed to disburse the amount of RS. 1,09,235/- alongwith an interest rate of 6% per annum calculated from the date of the filing of

the claim petition till the date of realisation. But, in case the compensation award has already been disbursed to the claimant during the pendency of this appeal, then the Insurance Company is free to recover the difference of compensation amount including the interest from the claimant. With these observations this appeal is allowed.

(R.S. CHAUHAN) J.

MRG.